



## Unresolved Issues in the BDCP Process

March 5, 2009

The BDCP process has been at work for two years now. To date, there are a substantial number of critical issues that the BDCP has not yet adequately addressed or resolved. These issues have been raised by NRDC, environmental groups that are participating in BDCP process, water users in BDCP, and the Delta Vision Task Force. The top six issues are summarized below.

### **1) Compliance with the Natural Communities Conservation Planning Act (NCCPA):**

The latest draft of the Overview of the Draft Conservation Strategy makes clear that BDCP has not committed to using the NCCPA to obtain permits. *See* Footnote 1 on page 1. **BDCP should commit to using the NCCPA to obtain take authorization under CESA.** This would ensure that the BDCP provides for the recovery of listed species. There are significant questions whether public funding should be used for implementation of a plan that does not commit to meeting the NCCPA's requirements.

### **2) Consistency with the Delta Vision Task Force's Key Recommendations Regarding Flows, a New Facility, Governance, Water Supply Diversification, and Goals:**

The *Delta Vision Strategic Plan* includes several key recommendations that should be addressed and considered in the BDCP. These recommendations are summarized in more detail in the attached letter from NRDC, EDF, TBI and Defenders to BDCP dated December 17, 2008.

BDCP has not yet indicated if the process will fully integrate the recommendations of the Task Force.

#### **A. BDCP Has Not Yet Analyzed a Full Range of Flows & Operational Constraints, Particularly Increased Spring and Fall Outflows**

Strategy 3.4 of the *Delta Vision Strategic Plan* recommends that higher and more variable freshwater flows in the Delta and upstream rivers must be restored to support the estuary's fish and wildlife. The Plan recognizes that the existing water quality standards in D-1641 are inadequate, and it recommends increased spring and fall Delta outflow, increased San Joaquin River inflow, and adoption of in-stream flow standards by DFG. To date, however, most of the BDCP analysis has focused on alternatives that would reduce, rather than increase, outflows, and serious consideration of alternatives that increase Delta outflows is still in initial stages of development. At the same time, BDCP has failed to include upstream reservoir operations and water inflows to the Delta, which are a critical part of the projects that are being analyzed and necessary to comprehensively analyze project operations. The ability of the BDCP process to complete these analyses prior to the current deadline for identifying a preferred alternative is highly in doubt.

#### **B. BDCP Has Not Yet Addressed Delta Vision's Critical Issues Regarding Peripheral Canal Design and Alternatives**

In Strategy 5.1, the *Delta Vision Strategic Plan* conditionally endorsed dual conveyance, but recognized that significant additional information and studies were needed to determine what alternative would be best for meeting Delta Vision's co-equal goals. Such information

includes: consideration of a full range of sizes of facilities, different alignments, a range of designs (unlined, lined and pipelines), dual conveyance vs. full isolation; performance under a common set of assumed sea level rise and seismic and flood events; and a full range of operational constraints, consistent with Delta Vision's increased flow recommendations.

**C. BDCP Has Not Yet Considered Investing in Alternative Water Supplies and Regional Self-Sufficiency to Achieve Its Water Supply Goal(s)**

Goal 4 of the *Delta Vision Strategic Plan* calls for California to reduce its reliance on the Bay-Delta as a water supply source, and to meet the State's water supply needs by making dramatic investments in alternative water supplies (particularly urban and agricultural water conservation, water recycling, conjunctive management of ground and surface waters, and local self-sufficiency). To date, BDCP has not explicitly identified the extent to which water supply goals can be achieved through actions outside of the Delta, nor addressed constraints on the ability of north to south transfer to meet water supply goals. BDCP must meaningfully address conservation (demand management) and use of alternative water supplies not reliant on north to south transfer in order to meet the needs of fish and people.

**D. BDCP has not yet Addressed Delta Governance (including Funding for Implementation and Adaptive Management)**

The *Delta Vision Strategic Plan*'s seventh goal calls for establishment of a new governmental body to oversee management of the Delta (including water project operations and land use in the Delta), as well as establishment of a sustainable funding plan for implementation. To date, BDCP has not meaningfully addressed these questions, and initial governance proposals (establishment of a JPA, comprised of water agencies, to operate a peripheral canal) raise significant concerns. Moreover, Delta Vision recommended an effective adaptive management program that links monitoring results with management actions, but BDCP has not yet addressed this question in a meaningful way. An effective adaptive management program requires that regulatory assurances under NCCPA are limited, so that effective management actions can be done in the future.

**E. BDCP Has Not Established Quantified Biological Goals and Objectives, Which Must Do More Than Merely Comply With the ESA/CESA**

The Delta Vision Task Force's *Vision* and *Strategic Plan* both recommend that management of the Delta be driven to achieve co-equal water supply and ecosystem goals, a goal which requires more than minimum ESA/CESA compliance. Although BDCP has begun developing goals and objectives, it has not yet developed quantitative biological goals and objectives. Quantitative goals (at both the population and ecosystem levels) are critical in order to help design and evaluate the efficacy of proposed conservation measures, adaptively manage BDCP and determine whether existing measures are sufficient to meet the BDCP goals. The goals should match or exceed those in existing and new recovery plans and specify both the doubling of anadromous fish species (especially fall run Chinook salmon and the state's salmon fishery), as required by the CVPIA and state law, and the recovery of listed species, consistent with the NCCPA. The ability of the BDCP process to quantify its goals and objectives – let alone use these targets to review and refine the conservation measures – prior to the current deadline for identifying a preferred alternative is highly in doubt.